

Honolulu, Hawaii

April 25, 2003

RE: S.B. No. 1262
S.D. 1
H.D. 1
C.D. 1

Honorable Robert Bunda
President of the Senate
Twenty-Second State Legislature
Regular Session of 2003
State of Hawaii

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Second State Legislature
Regular Session of 2003
State of Hawaii

Sir:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 1262, S.D. 1, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PROCUREMENT,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to amend various provisions of the state procurement code.

Your Committee on Conference met numerous times to discuss the differences between the House and Senate versions of this measure before reaching agreement. Your Committee on Conference used the S.D. 1 version of this measure as a base to prepare the C.D. 1 version, incorporating the amendments discussed below.

Your Committee on Conference amended the pre-bid conference provisions of this measure to require a pre-bid conference for all construction or design-build projects with a total estimated

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contract value of \$500,000 or more that are awarded pursuant to competitive sealed bidding, and for all such projects with an estimated value of \$100,000 or more awarded through a request for proposals. Your Committee on Conference also amended the language to clarify that only one pre-bid conference is required.

In addition, your Committee on Conference inserted a provision to require the head of the purchasing agency to invite all potential interested subcontractors and union representatives to attend the pre-bid conference.

Your Committee on Conference also included language from the H.D. 1 version of this measure to authorize nonselected offerors and nonselected professional service providers to request a "debriefing" prior to filing an official protest. Rather than include the language in section 103D-701, Hawaii Revised Statutes (HRS), your Committee on Conference inserted the language directly into sections 103D-303 and 103D-304, HRS. Your Committee on Conference also amended section 103D-701, HRS, to make the protest timeframe consistent.

Your Committee on Conference retained the language from the S.D. 1 version regarding procurement of professional service providers, but added language to give the purchasing agency greater flexibility when awarding professional service contracts for less than \$25,000, and to require the head of the purchasing agency to document the reason if a contract is not successfully negotiated with the first or second ranked person on the list. Your Conference Committee also included language to require electronic posting of every professional service contract awarded for more than \$5,000, rather than \$25,000.

Your Committee on Conference amended the "offeror responsibility" provisions to address constitutionality concerns. As amended, offerors still must demonstrate compliance with Hawaii employment laws, but only once they are awarded a contract. In addition, offerors must be incorporated or organized under the laws of the State of Hawaii or must register a separate branch or division in the State that is capable of fully performing under the contract.

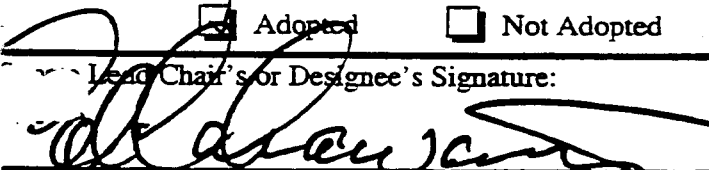
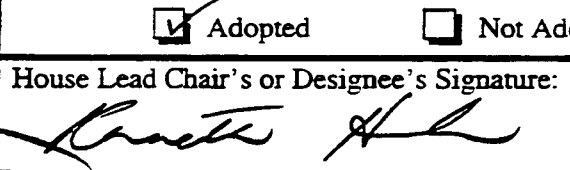
As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 1262, S.D. 1, H.D. 1, as amended herein, and recommends



CCR92

Hawaii State Legislature

Record of Votes of a
Conference Committee

Bill/Concurrent Resolution No.: SB 1262, SD1, HD1					Date/Time: 04/25/03 1:30 pm				
<input checked="" type="checkbox"/> The recommendation of the House and Senate managers is to pass with amendments (CD).									
<input type="checkbox"/> The Committee is reconsidering its previous decision.									
<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure.					<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.				
Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
KAWAMOTO, Cal (Chair)	✓				HIRAKI, Kenneth T. (Co-Chr)	✓			
ADUJA, Melodie Williams	✓				MAGAQAY, Michael V. (Co-Chr)	✓			
ESPERO, Willie C.	✓				HERKES, Robert N.	✓			
SAKAMOTO, Norman				✓	MEYER Colleen R.				✓
WHALEN, Paul				✓					
TOTAL	3			2	TOTAL	3			1
A = Aye		WR = Aye with Reservations			N = Nay		E = Excused		
Senate Recommendation is:					House Recommendation is:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted					<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Senate Lead Chair's or Designee's Signature:					House Lead Chair's or Designee's Signature:				
									
Distribution: Original - Lead Chair of Originating House					Blue - Drafting Agency				
Pink - Senate Clerk's Office					Yellow - House Clerk's Office				

that it pass Final Reading in the form attached hereto as S.B.
No. 1262, S.D. 1, H.D. 1, C.D. 1.

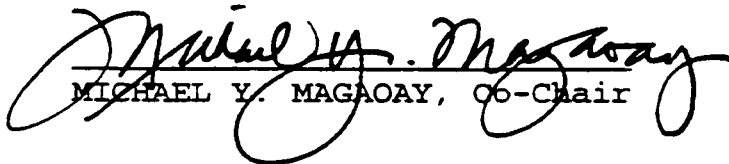
Respectfully submitted on behalf
of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE


KENNETH T. HIRAKI, Co-Chair


CAL KAWAMOTO, Chair


MICHAEL Y. MAGAOAY, Co-Chair



A BILL FOR AN ACT

RELATING TO PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to establish
2 procurement policies and procedures that:

- 3 (1) Ensure in-state contractors' ability to win awards of
4 public funds for state contracts;
- 5 (2) Promote public confidence in the integrity of the
6 procurement process;
- 7 (3) Increase openness in the award of competitive sealed
8 proposals and professional services contracts;
- 9 (4) Enhance procurement education in the Pacific by
10 creating a Hawaii procurement institute;
- 11 (5) Require a pre-bid conference to be attended by all
12 potential bidders, offerors, subcontractors, and union
13 representatives, that will allow all interested
14 parties to raise their protests prior to bidding, so
15 that any subsequent protests can be resolved quickly
16 and efficiently pursuant to the timeframe established
17 in section 103D-701, Hawaii Revised Statutes; and



SECTION 2. Part X of chapter 103D, Hawaii Revised

"§103D- Pre-bid conference. (a) At least fifteen days

(b) The procurement policy board shall adopt rules under chapter 91 to effectuate this section."

"[f]103D-206[g] Additional duties of the administrator of the procurement office. In addition to the duties referred to in section 103D-205, the administrator shall:

- (1) Perform periodic review of the procurement practices of all governmental bodies;
- (2) Assist, advise, and guide governmental bodies in matters relating to procurement;
- (3) Develop and administer a statewide procurement orientation and training program;
- (4) Develop, distribute, and maintain a procurement manual for all state procurement officials; ~~[and]~~
- (5) Develop, distribute, and maintain a procurement guide for vendors wishing to do business with the State and its counties~~[-]~~; and
- (6) Establish and maintain a Hawaii procurement institute, in cooperation with the University of Hawaii William S. Richardson school of law and other public and private entities and/or persons, to promote and develop a professional acquisition workforce and to improve and enhance the State of Hawaii's contractor industrial base through education and training. The Hawaii procurement institute may:
 - (A) Conduct and participate in procurement education and training for entry level and higher qualified



(D) Establish and maintain a procurement library within the State of Hawaii."

SECTION 4. Section 103D-303, Hawaii Revised Statutes, is amended to read as follows:

"§103D-303 Competitive sealed proposals. (a) Competitive sealed proposals may be utilized to procure goods, services, or construction designated in rules adopted by the procurement policy board as goods, services, or construction which are either not practicable or not advantageous to the State to procure by competitive sealed bidding. Competitive sealed proposals may also be utilized when the head of a purchasing

(g) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

SECTION 5. Section 103D-304, Hawaii Revised Statutes, is amended to read as follows:

1 would disqualify the person from being considered for a contract
2 award.

(d) Whenever during the course of the fiscal year the agency needs a particular professional service, the head of the purchasing agency shall designate a ~~[screening]~~ selection committee to evaluate the statements of qualification and performance data of those persons on the list prepared pursuant to subsection (c) along with any other pertinent information, including references and reports. The ~~[screening]~~ selection committee shall be comprised of a minimum of three ~~[employees of the purchasing agency]~~ persons with sufficient education, training, and licenses or credentials in the area of the services required. ~~[If the purchasing agency and using agency are different, the committee shall include at least one qualified employee from the using agency. When the committee includes an employee from a using agency, the employee shall be appointed by the head of the using agency. If qualified employees are not available from these agencies, the officers may designate employees of other governmental bodies.]~~ In designating the members of the selection committee, the head of the purchasing agency shall ensure the impartiality and independence of committee members. The names of the members of

3 (e) The ~~[primary]~~ selection criteria employed ~~[by the~~
4 ~~screening committee]~~ in descending order of importance shall
5 ~~[include but not]~~ be ~~[limited to]~~ :

- (1) Experience and professional qualifications [~~of the staff to be assigned~~] relevant to the project[-] type;
- (2) Past performance on projects of similar scope for public agencies or private industry [~~-and~~], including corrective actions and other responses to notices of deficiencies;
- (3) Capacity to accomplish the work in the required time [-]; and
- (4) Any additional criteria determined in writing by the selection committee to be relevant to the purchasing agency's needs or necessary and appropriate to ensure full, open, and fair competition for professional services contracts.

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(g) The selection committee shall rank a minimum of three persons based on the selection criteria and send the ranking to the head of the purchasing agency. The contract file shall contain a copy of [the criteria established for the selection and] the [committee's] summary of qualifications for the ranking of each of the persons provided to the head of the purchasing agency [by the committee.] for contract negotiations. If more than one person holds the same qualifications under this section, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among the persons holding the same qualifications.

6 (k) In cases of awards made under this section,
7 nonselected professional service providers may submit a written
8 request for debriefing to the chief procurement officer or
9 designee within three working days after the posting of the
0 award of the contract. Thereafter, the head of the purchasing
1 agency shall provide the requester a prompt debriefing in
2 accordance with rules adopted by the policy board. Any protest
3 by the requester pursuant to section 103D-701 following
4 debriefing shall be filed in writing with the chief procurement
5 officer or designee within five working days after the date that
6 the debriefing is completed."

19 "§103D-310 Responsibility of offerors. (a) Unless the
20 policy board, by rules, specifies otherwise, before submitting
21 an offer, a prospective offeror, not less than ten calendar days
22 prior to the day designated for opening offers, shall give

(b) Whether or not an intention to bid is required, the procurement officer shall determine whether the prospective offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. For this purpose, the officer, in the officer's

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~~21 (c) In any section 103D 302 or 103D 303 contract for a public works project, a state agency shall award the contract to~~

~~(d) In any section 103D 302 or 103D 303 contract for a public works project, a state agency shall award the contract to an offeror who has filed all state tax returns due to the State and paid all amounts owing on such returns for four successive years prior to submitting the offer; provided that the amount of that offer is not more than seven per cent higher than the amount offered by any competing contractor who has not filed or paid all applicable state taxes, and the amount of the offer by the state tax paying offeror is more than \$5,000,000.~~

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7 SECTION 9. If any provision of this Act, or the
8 application thereof to any person or circumstance is held
9 invalid, the invalidity does not affect other provisions or
10 applications of this Act which can be given effect without the
11 invalid provision or application, and to that extent the
12 provisions of this Act are severable.

15 SECTION 11. This Act shall take effect on July 1, 2003.

Report Title:

Procurement; Offeror Compliance With State Employment Laws;
Pre-bid Conference; Procurement Institute; Professional Service
Providers

Description:

Requires that all offerors awarded state contracts be incorporated or organized under the laws of the State or create an in-state division and comply with all applicable state employment laws. Requires a pre-bid conference to be held at least fifteen days prior to submission of bids pursuant to section 103D-302 for construction or design-build projects with a total contract value of \$500,000 or greater, or proposals pursuant to section 103D-303 for projects over \$100,000. Establishes a Procurement Institute to improve and enhance the efficiency, integrity and transparency of the State procurement process. Provides that design professional services may only be procured under section 103D-304, Hawaii Revised Statutes, or pursuant to emergency procurement procedures. Requires that an independent selection committee rank the applying professional service providers according to relevant criteria. Requires the awarding procurement official to negotiate award of the contract with the providers in the rank order set by the committee. Requires equal distribution of contract awards where providers hold the same qualifications or ranking. Repeals state taxpayer procurement preference. (CD1)

